BORA LASKIN LAW LIBRARY
3 1761 10084537 9

PUBLIC LAW

1982 - 83

Volume 1

LAW LIBRARY

SEP 22 1982

FACULTY OF LAW
UNIVERSITY OF TORONTO

FACULTY OF LAW LIBRARY
UNIVERSITY OF TORONTO

PUBLIC LAW

1982 - 83

Volume 1

H.N. Janisch

R.C.B. Risk

FACULTY OF LAW

UNIVERSITY OF TORONTO

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/publiclaw01jani_1

TABLE OF CONTENTS

CHAPTER ONE: INTRODUCTION

Section 1: The Facts 1

Section 2: Legislation 7

CHAPTER TWO: STATUTES, LEGISLATIVE SUPREMACY AND THE LEGISLATIVE PROCESS

Introduction 9

Section 1: The Legislative Process

Note 9

Jackson and Atkinson, The Canadian Legislative System 15

Section 2: Legislative History: A Sample Problem

Hearings 19

A Sample Problem 21

CMA Brief to the House of Commons Standing Committee on Transport 22

The Senate 35

Section 3: Legislative Supremacy

Note 37

Dias, Jurisprudence 37

Dicey, An Introduction to the Study of the Law of the Constitution, 1885 40

Attorney General of Ontario v. Attorney General of Canada 48

K.V.P. Co. Ltd. v. McKie 53

The KVP Company Limited Act, 1950 58

Section 4: Entrenchment of a Charter of Right

Note 59

Report of the Ontario Royal Commission Inquiry into Civil Rights (McRuer Report) 60

Manitoba Law Reform Commission, Report on the Case for a Provincial Bill of Rights 63

The Proposed Constitution Act, 1981 68

CHAPTER THREE: REGULATIONS

Section 1: Introduction

Note 76

The MacGuigan Report 77

Section 2: Definitional Problems

Note 84

What is "Law" - Directives of the Commission of Penitentiaries and Section 28 of the Federal Court Act - The Tip of the Iceberg of "Administrative Quasi-Legislation" 89

Section 3: Parliamentary Scrutiny

Note 97

"Heart, Core, Marrow", Excerpts from The Globe and Mail 101

"It Would be so Easy", Excerpts from The Globe and Mail 102

"Dangerous Government", Excerpts from The Globe and Mail 103

"Legal Authority to Dump", Excerpts from The Globe and Mail 104

"To Create a Monster", Excerpts from The Globe and Mail 105

"The Ottawa Scene", Excerpts from The Globe and Mail 106

Northern Pipeline Act 106

House of Commons Debates 108

A.V. Dicey, Introduction to the Study of the Law of the Constitution 110

Report of the Committee on Ministers' Powers 112

Ontario Royal Commission Inquiry into Civil Rights 115

H.W.R. Wade, Administrative Law 117

"Waddell has the right to be heard, court says", Excerpts from The Globe and Mail 118

Section 4: Advance Consultation

The MacGuigan Committee Report 119

The Peterson Committee Report 123

Canada Gazette, Part I 124

Section 5: Public Access

The MacGuigan Report 132

Statutory Instruments Act 133

H.N. Janisch, Regulations: Publish or Perish 134

H.N. Janisch, Secret Law Condemned 135

Regina v. Catholique 137

"And Ignorance of the Law is no Excuse", Excerpts from The Globe and Mail 142

The Peterson Report 144

A.H. Janisch, Indexing 146

Revised Statutes of British Columbia, 1979 151

Section 6: Transportation of Dangerous Goods: The Act and the Regulations

Transportation of Dangerous Goods Act 152

CHAPTER FOUR: STATUTORY INTERPRETATION

Section 1: Introduction: Mississauga Re-visited, An Easy Case and Some Readings 161

The Police Act 162

Highway Traffic Act 162

Re Ontario Mushroom and Learie 163

Note 170

Pernochan, Statutory Interpretation: An Outline of Method 171

Heydon's Case 191

Lieber, Legal and Political Hermeneutics 192

Willis, Statutory Interpretation in a Nutshell 193

Llewellyn, ... The Rules or Canons About How Statutes Are To Be Interpreted 201

R. v. Ojibway 204

Section 2: A Harder Case

MacGibbon, The Nolan Case 206

The National Emergency Transitional Powers Act 211

A.G. Canada v. Nolan and Hallet & Carey 214

A.G. Canada v. Hallet & Carey 225

Willis, Comment on the Supreme Court Decision 230

Power, Letter to the Editor 234

Fillmore, Letter to the Editor 235

Willis, Letter to the Editor 236

Section 3: The Permitted Sources of Ideas

Dreidger, The Construction of Statutes 241

Note 241

Assam Railways and Trading v. Commissioners of Inland Revenue 242

United States v. Public Utilities Commission of California 244

Kilgour, The Rule Against the Use of Legislative History 249

Corry, The Use of Legislative History in the Interpretation of Statutes 251

Note 254

Laidlaw v. Metro Toronto 261

The Law Commission 268

The Preparation of Legislation (The Renton Report) 273

Editorial: Reform of the Law Making Process 276

Kilgour, The Rule Against the Use of Legislative History 278

Davis, Legislative History and The Wheat Board Case 279

Bathurst Paper v. Minister of Municipal Affairs 279

C.P.R. v. Oulette 283

Gordon v. Royal College of Dental Surgeons of Ontario 289

Carroll v. Cudney 294

Section 4: Some Rules About How to Read

Note 296

Willis, Statutory Interpretation in a Nutshell 296

United States v. Alpers 299

Eggers v. B.C. College of Dental Surgeons 303

Re Canim Lake Saw Mills 304

Grini v. Grini 304

Re Nelson 306

Re Bains v. Superintendent of Insurance 307

Section 5: Presumptions

Friedmann, Statute Law and Its Interpretation in The Modern State 309

Horack, The Disintegration of Statutory Interpretation 311

Brampton Jersey Enterprises v. Milk Control Board 313

Greater Niagara Transit Commission v. Matson 314

United States v. McBoyle 321

Hall, Strict or Liberal Interpretation of Penal Statutes 322

Winnipeg Film Society v. The Queen 328

Section 6: The Planning Act

The Planning Act 332

Re Carter v. Congram 333

Redmond v. Rothschild 335

Re Forfar and East Gwillimbury 338

Reference Re Certain Titles 342

Drewery v. Century City Developments 353

Re MacDonald v. Yates 356

Note 359

Section 7: The Letter and The Equity

Holy Trinity Church v. United States 362
Caminetti v. United States 364
Worthington v. Robbins 368
Craies, Statute Law 370
Magdor and St. Mellons Rural District Council v. Newport 371
Minister of Transport v. Phoenix Assurance 374

CHAPTER FIVE: TYPICAL ADMINISTRATIVE FUNCTIONS AND ISSUES

Section 1: Worker's Compensation 379

Part (a) The Beginnings

Note 379
Priestly v. Fowler 380
Farwell v. The Boston & Worcester Rail Road 382
Deverill v. Grand Trunk Railway 387
Levy, The Law of the Commonwealth and Chief Justice Shaw 388
Risk, The Law Golden Age: Property and the Allocation of Losses in Ontario in the Nineteenth Century 392
Horwitz, The Transformation of American Law 393
Letter from Lord Justice Bramwell to Sir Henry Jackson, Bart., Q.C., M.P. 395
Lord Justice Bramwell, On the Liability of Masters to Workmen for Injuries from Fellow Servants 396
The Factories Act 398
The Workmen's Compensation for Injuries Act (1886) 399

Part (b) The Courts: The Judgments

Schwoob v. Michigan Central Railway Company 402
McCloherty v. The Gale Manufacturing Company 406

Part (c) The Background of Compensation

Royal Commission on the Relations of Labour and Capital 409

C. Heron and B. Palmer, Through the Prism of of the Strike: Industrial Conflict in Southern Ontario, 1901-14 412

Friedman & Ladinsky, Social Change and the Law of Industrial Accidents 418

The Transcript 423

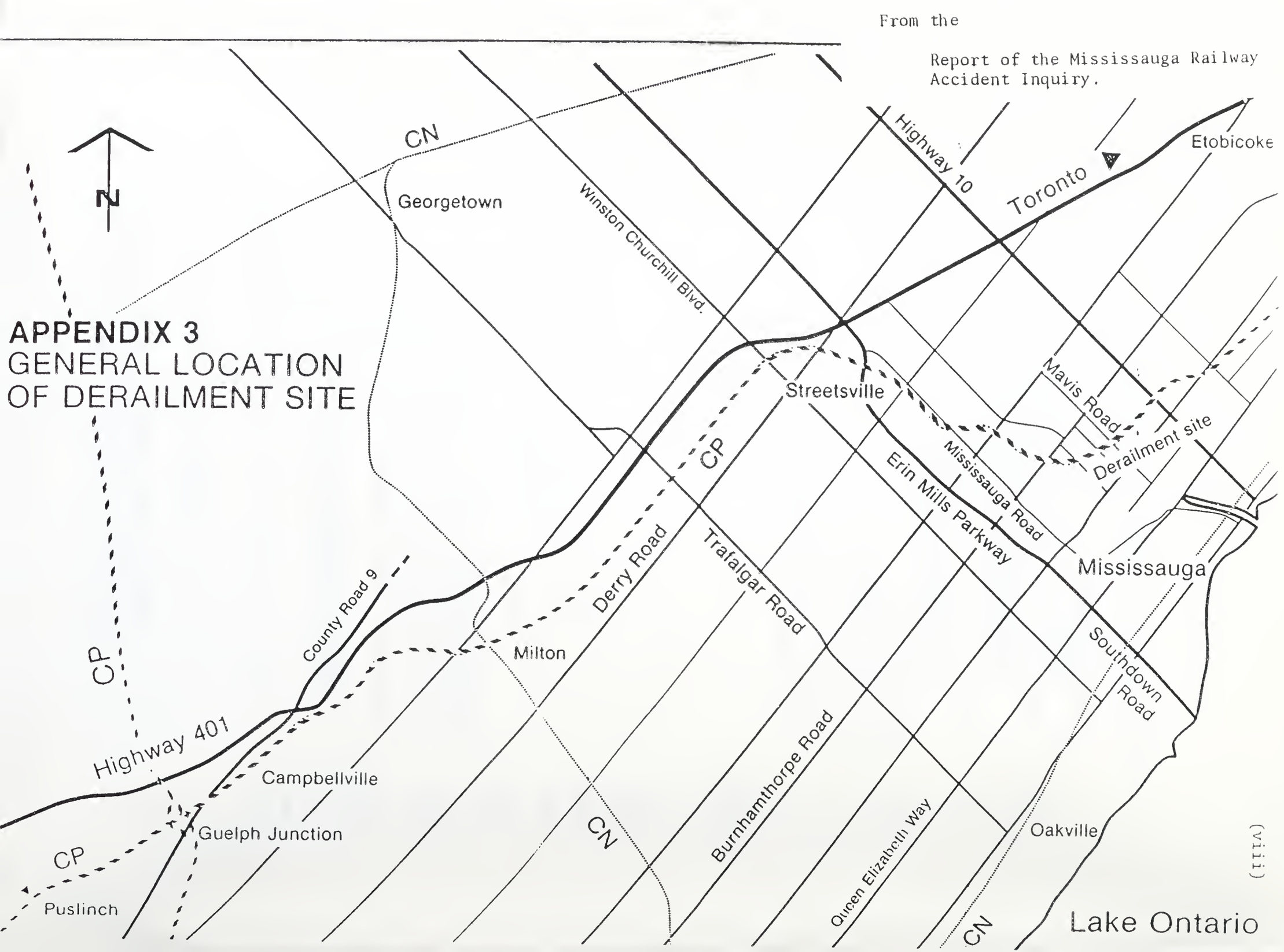
The Interim Report 427

The Final Report 428

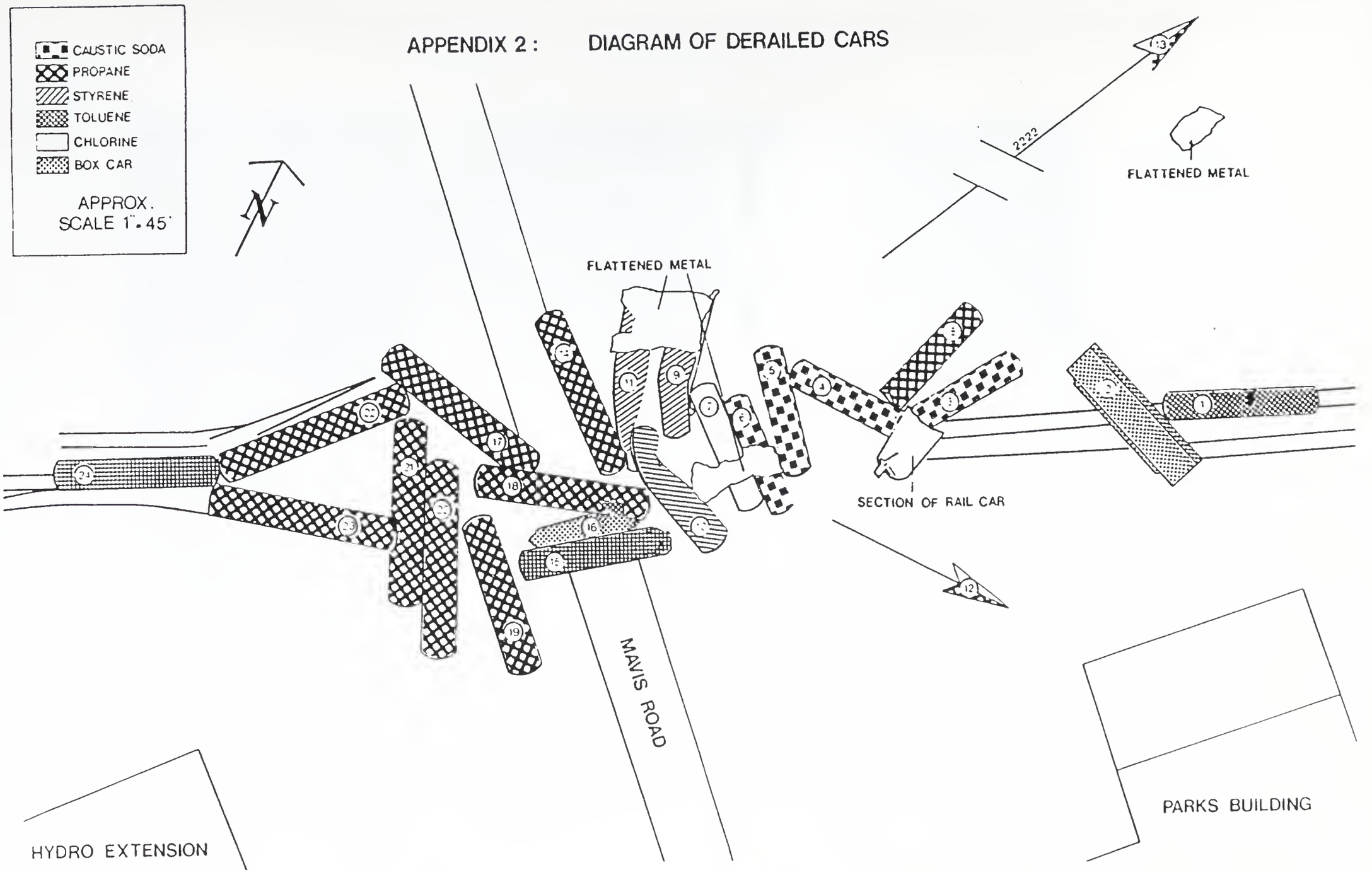
The Workmen's Compensation Act 435

From the

Report of the Mississauga Railway Accident Inquiry.



APPENDIX 2 : DIAGRAM OF DERAILED CARS



From the

Report of the Mississauga Railway
Accident Inquiry.